

6 Official Opinions of the Compliance Board 118 (2009)

Minutes – Failure to prepare minutes following meetings attended by quorum within reasonable time violated Act

June 18, 2009

Stephen Davies

The Open Meetings Compliance Board has considered your complaint that the City of Takoma Park's Committee on the Environment has violated the Open Meetings Act by failing to produce minutes of its meetings since May 8, 2007. To the extent the Committee has held meetings since that date and a quorum of the Committee's membership was in attendance, the Committee was required to have written minutes prepared as soon as practicable. Thus, the Committee violated the Act to the extent that it does not have written minutes for those meetings (except perhaps for the most recent meeting since the Committee is entitled to a reasonable period for the drafting of minutes and for review and adoption).

I

Complaint and Response

According to the complaint, the Takoma Park Committee on the Environment was established by ordinance in July 2005. While the Committee usually meets monthly, it has produced minutes for only six meetings; the latest minutes available are for a meeting held on May 8, 2007. Although the ordinance provides for a minimum membership of seven, it has operated with fewer members, perhaps for as long as two years. However, the Committee has "nonetheless continued to meet in its 'official advisory/approval role to the City Council on all matters related to environmental protection....'" (internal citation omitted) A copy of the ordinance establishing the Committee and a description of the Committee from the City of Takoma Park's website were included with the complaint.¹

¹ The complaint also contended that the Committee does not post agendas as required by the ordinance, but acknowledged that the Open Meetings Act does not require that an agenda be posted. Our review, of course, is limited to the (continued...)

In a timely response on behalf of the Committee, Linda Pearlson, Esquire, has acknowledged that the Committee has violated the Act by failing to timely prepare minutes of its meetings at which a quorum was present. The response noted that the Committee is a public body that is subject to the Act. The Committee generally meets on the second Tuesday of each month. Notice of Committee meetings is provided through several mechanisms and all meetings are open to the public. Actual membership of the Committee has varied. While not excusing compliance with the Act, the response indicates that the Committee consists of volunteers with other responsibilities; this factor has impacted the ability to produce and approve minutes. The Committee has had to rely on a volunteer to assume responsibility for producing minutes. The last individual who volunteered for this responsibility no longer serves on the Committee. During a significant period of 2008, the Committee operated without a quorum. The response noted that minutes for those sessions were not required.

The response indicated that the Committee recently had several new members appointed and that notes for meetings this year are being reviewed and minutes are expected to be approved at the Committee's May meeting. However, the Committee has been advised that this action will not cure the delay. Once approved, copies will be posted on the City's website and provided to the complainant. In closing, the response noted that the chair of the Committee has agreed that minutes will be prepared and included on the agenda at the subsequent meeting for adoption.

II

Analysis

Given the Committee's acknowledgment, detailed discussion is not necessary. Under the Open Meetings Act, a public body is required to produce written minutes of its meetings as soon as practicable after a meeting is held. § 10-509(b).² While we have recognized that special circumstances might justify a delay, as a general rule, minutes ought to be available on a cycle

¹ (...continued)

requirements of the Open Meetings Act. *See, e.g., 3 OMCB Opinions* 143, 144 (2001). Thus, we do not address compliance with the ordinance in terms of the Committee membership and agenda matters.

² All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland. A meeting requires the presence of a quorum. § 10-502(g). As noted in the Committee's response, absent a quorum, no violation pertaining to minutes could occur.

paralleling a public body's meetings, with the only lag time that necessary for drafting and review. 5 *OMCB Opinions* 14, 17 (2006).

To the extent minutes have not been produced for Committee meetings attended by a quorum (with the possible exception of the most recent meeting), the Committee violated the Act. We acknowledge the Committee's willingness to alter its practice to assure future compliance.

III

Conclusion

In summary, to the extent the Committee has held meetings since May 8, 2007, attended by a quorum of the Committee's membership, the Committee was required to have written minutes prepared as soon as practicable. Thus, the Committee violated the Act to the extent that it does not have written minutes for those meetings (except perhaps for the most recent meeting since the Committee is entitled to a reasonable period for the drafting of minutes and for review and adoption).

OPEN MEETINGS COMPLIANCE BOARD

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